

1 UNITED STATES OF AMERICA

2 EASTERN DISTRICT OF MICHIGAN

3 SOUTHERN DIVISION

4 - - -

5 IN RE: AUTOMOTIVE PARTS
6 ANTITRUST LITIGATION

Master File No. 12-md-02311
Hon. Marianne O. Battani

7 _____/

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9 SETTLEMENT HEARING

10 BEFORE THE HONORABLE MARIANNE O. BATTANI
11 United States District Judge
12 Theodore Levin United States Courthouse
13 231 West Lafayette Boulevard
14 Detroit, Michigan
15 Wednesday, November 18, 2015

16 APPEARANCES:

17 **Direct Purchaser Plaintiffs:**

18 GERARD V. MANTESE

19 **MANTESE, HONIGMAN, ROSSMAN & WILLIAMSON, P.C.**

1361 East Big Beaver Road

Troy, MI 48083

(248) 457-9200

20 SHAWN M. RAITER

LARSON KING, L.L.P.

30 East Seventh Street, Suite 2800

Saint Paul, MN 55101

(651) 312-6500

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3
4
5
6
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14
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16
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18
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20
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22
23
24
25

1 APPEARANCES: (Continued)

2 **For the Defendants:**

3 ALDEN L. ATKINS
4 **VINSON & ELKINS, L.L.P.**
5 2200 Pennsylvania Avenue NW, Suite 500 West
6 Washington, D.C. 20037
7 (202) 639-6613

8 PETER M. FALKENSTEIN
9 **JAFFE, RAITT, HEUER & WEISS, P.C.**
10 535 W. William Street, Suite 4005
11 Ann Arbor, MI 48103
12 (734) 222-4776

13 MICHELLE K. FISCHER
14 **JONES DAY**
15 51 Louisiana Avenue NW
16 Washington, D.C. 20001
17 (202) 879-4645

18 ANDREW S. MAROVITZ
19 **MAYER BROWN, L.L.P.**
20 71 South Wacker Drive
21 Chicago, IL 60606
22 (312) 701-7116

23 MICHAEL RUBIN
24 **ARNOLD & PORTER, L.L.P.**
25 555 Twelfth Street NW
Washington, D.C. 20004
(202) 942-5094

WM. PARKER SANDERS
SMITH, GAMBRELL & RUSSELL, L.L.P.
Promenade Two, Suite 3100
1230 Peachtree Street NE
Atlanta, GA 30309
(404) 815-3684

1 APPEARANCES: (Continued)

2 **For the Defendants:**

3 JOANNE GEHA SWANSON
4 **KERR, RUSSELL & WEBER, P.L.C.**
5 500 Woodward Avenue, Suite 2500
6 Detroit, MI 48226
7 (313) 961-0200

8 LINDSEY ROBINSON VAALA
9 **VINSON & ELKINS, L.L.P.**
10 2200 Pennsylvania Avenue NW, Suite 500 West
11 Washington, D.C. 20037
12 (202) 639-6585

13 PETER KONTIO
14 **ALSTON & BIRD, L.L.P.**
15 1201 West Peachtree Street
16 Atlanta, GA 30309
17 (404) 881-7000

18 HOWARD B. IWREY
19 **DYKEMA GOSSETT, P.L.L.C.**
20 39577 Woodward Avenue, Suite 300
21 Bloomfield Hills, MI 48304
22 (248) 203-0526

23 MOLLY M. DONOVAN
24 **WINSTON & STRAWN, L.L.P.**
25 200 Park Avenue
New York, NY 10166
(212) 294-4692

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1 Detroit, Michigan

2 Wednesday, November 18, 2015

3 At about 3:00 p.m.

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5 (Court and Counsel present.)

6 THE COURT: Good afternoon. This is a nice
7 representative group here. Okay. This is the proposed
8 settlement final hearing. And, Counsel, may I have your
9 appearances, please?

10 MR. RAITER: Yes, Your Honor. Shawn Raiter on
11 behalf of the auto dealers.

12 Your Honor, before you today we have two motions.
13 The first is for final approval of the collection of
14 settlements that you have preliminarily approved over the
15 course of about a year to a year and-a-half. And then the
16 second is the auto dealers' counsels' request for attorney
17 fees, reimbursement of litigation expenses, of future
18 litigation, a reserve fund, and then also service or
19 incentive awards for the named representatives in the auto
20 dealer cases.

21 THE COURT: You know what, I think we should get
22 defendants' appearances on the record. It is a small group
23 and I would like to do that formally.

24 MR. KONTIO: Peter Kontio for the defendant
25 AutoLiv.

1 MS. KINGSLEY: Meredith Kingsley for the defendant
2 AutoLiv.

3 MR. IWREY: Howard Iwrey for the TRW defendants.

4 MR. MAROVITZ: Andy Marovitz for Lear.

5 MR. RUBIN: Michael Rubin for Fujikura.

6 MR. SANDERS: Parker Sanders for Kungshun Lears
7 Sales and Engineering.

8 MR. ATKINS: Alden Atkins for Hitachi Automotive
9 and the HIAMS defendants.

10 MS. VAALA: Lindsey Vaala for Hitachi Automotive
11 and the HIAMS defendants.

12 MR. SIMMONS: Peter Simmons for the T. Rad
13 defendants.

14 MS. DONOVAN: Molly Donovan for the Nippon Seiki
15 defendants and the Panasonic defendants.

16 THE COURT: Okay.

17 MR. JOHNSON: Alan Johnson for the TRW defendants.

18 MS. FISCHER: Michelle Fischer for the Yazaki
19 defendants.

20 MS. SWANSON: Joanne Geha Swanson for AutoLiv and
21 Fujikura defendants.

22 THE COURT: Do you want to put your appearance?

23 MR. FALKENSTEIN: Peter Falkenstein for Kungshun
24 Lear.

25 THE COURT: Okay. Thank you. Got everybody. With

1 you, Mr. Raiter, is Mr. Mantese. Do you want to put your
2 appearance on the record?

3 MR. MANTESE: Gerard Mantese for the auto
4 dealerships. Thank you.

5 MR. RAITER: Thank you, Your Honor. As you know,
6 we have ten defendants or defendant groups before you with
7 settlements that you have previously preliminary approved.
8 The settlements go across 18 different parts cases. They are
9 broken down into 23 different settlement classes, in other
10 words, by part or by defendant or by settling defendant
11 group. The total lump sum cash benefits provided are
12 approximately \$59 million to the auto dealers. These are all
13 settlements that are lump sum cash. The defendants have
14 already transmitted the funds to trust accounts or qualifying
15 settlement funds to the auto dealers and so the money has
16 already changed hands and is sitting there.

17 These again are lump sum cash settlements. There
18 are no reversions, no side pay remainders. These all involve
19 substantial cooperation as Your Honor knows from the
20 preliminary approval hearings.

21 We received your authorization to send notice to
22 the class and disseminate various forms of notice, we did
23 that -- or to the classes, I should say. We carried out that
24 notice plan. We have as part of final approval papers
25 submitted a declaration from Kenneth Jue from Gilardi and

1 Company confirming and attesting that the notice plan was
2 carried out. That was a notice plan that ultimately went to
3 about 6,000 automobile dealerships that sell new cars in the
4 indirect purchaser states. That number was a little bit
5 smaller than what we thought we were going to have as part of
6 the preliminary approval. The list available was about
7 6,000.

8 We then also sent e-mails that were e-mail
9 addresses associated with new --

10 THE COURT: I didn't understand that. Is that
11 various people within the dealership?

12 MR. RAITER: Exactly, yes. So some of these
13 dealerships -- our own class representatives, for example, we
14 know received three or four e-mails of the notice. The way
15 you get those addresses are people sign up or they are part
16 of some trade organization or they go to some conference or
17 something, and so there are groups that sell lists of
18 information, we've all received e-mails I'm sure and you
19 wonder why, but there are these groups out there.

20 So we had 124,000 e-mail addresses that were
21 associated in some way -- with pretty good knowledge they
22 were associated with automobile dealerships in the indirect
23 purchaser states. We then published notice in Ward's, Auto
24 World, Automotive News and Auto Dealer Monthly. There were
25 social media efforts on Facebook and Twitter. There was a

1 press release issued as well to try to bring attention to the
2 settlements.

3 As you saw from the declaration of Kenneth Jue, the
4 notice plan reached approximately 95 percent of new vehicle
5 automobile dealers in the indirect purchaser states.

6 The class member reaction was excellent. We have
7 no objectors. We have no opt outs. Nobody asked to speak or
8 appear at this hearing. Those of us who do this type of
9 litigation, that's fairly remarkable that we have a nice
10 uniformly supported settlement before you.

11 THE COURT: There was one who was going to opt out
12 but did not; is that correct?

13 MR. RAITER: Yes, exactly. There was an automotive
14 dealership group called Group One Automotive who initially
15 opted out. Having considered it further, having spoken with
16 not only counsel for the auto dealers but their own counsel
17 and other people and decided to withdraw that exclusion,
18 which was something that you have allowed in your preliminary
19 approval orders and the notice order, and again that's very
20 common.

21 If you think about that, just as an aside, what
22 happens in cases like this, there are law firms soliciting
23 opt outs. There are lawyers that go to the big automotive
24 groups, absolutely, the big ones, Auto Nation, Penske, groups
25 like this, all receive multiple letters from law firms

1 soliciting them to opt out of these settlements. And we as
2 auto dealer counsel get contacted and we speak with those
3 potential class members about the benefits and the risks and
4 the ups and the downs of these settlements. And having done
5 that in this case, this one group who did elect initially to
6 opt out came back in. So the fact that we don't have any opt
7 outs from any of the large groups or even the small groups is
8 very remarkable and as you know supports the settlement, it
9 is a very strong factor for you.

10 So we didn't have -- because we didn't have
11 objections, we didn't have any objections to the merits of
12 the settlement, the amounts offered, the terms of the
13 settlement, the attorney fees, the requests for reimbursement
14 of expenses or the service or incentive awards or the notice,
15 quite frankly, sometimes people object to the notice plan, we
16 didn't have any such objections here.

17 So, Your Honor, as you know, the 6th Circuit has
18 seven factors that you are to look at as part of final
19 fairness and final approval. I don't think we need to go
20 through all of them here. You are familiar with them. We
21 have briefed them.

22 THE COURT: We have done that before in the
23 preliminary.

24 MR. RAITER: We have.

25 THE COURT: Nothing has changed?

1 MR. RAITER: Nothing has changed. I think in
2 summary the important factors are the amount of relief
3 offered here is substantial. It is the result of counsel
4 certainly for the auto dealers but I presume the defendants
5 as well looking at the merits, the risks, the benefits of
6 settling now rather than continuing to litigate, and then
7 also looking at what is actually being provided to these
8 automobile dealerships who come forward and file a claim and
9 ask for some reimbursement. These were certainly
10 arm's-length negotiations. I think you have seen firsthand
11 that the parties are vigorously and zealously representing
12 their clients, so there is no reason to think that any of
13 these settlements were cooked up in some fashion, and they
14 were certainly the result of counsel who were well armed with
15 ample information about the merits, discovery.

16 As you know, we have not only active discovery
17 going on but we also have cooperation in some of these cases
18 that really does benefit quite a bit the plaintiffs'
19 understanding what is at issue, the conduct, the likely
20 affected commerce and then therefore the merits and
21 weaknesses of our case.

22 We believe these are excellent settlements, counsel
23 for the auto dealers believe that, we believe these are in
24 the best interest of the classes, and they should be finally
25 approved.

1 THE COURT: Is there anyone else who has any input
2 in the settlement beside plaintiffs and defendants? Are
3 there any third-party financial folks who are involved here?

4 MR. RAITER: Do you mean somebody who has an
5 interest in the settlement like a funding company, is that
6 what you mean?

7 THE COURT: Yes.

8 MR. RAITER: Not from auto dealers' perspective.

9 THE COURT: Okay. Thank you.

10 MR. RAITER: These are just the auto dealers and
11 their counsel and the settlements, there's no interest, no
12 one has a share of anything.

13 We have put in front of you, Your Honor, four plans
14 of allocation that were developed by Stuart Rosenthal, who
15 was the special allocation consultant that the auto dealers
16 engaged with the Court's approval. He has spent a great deal
17 of time trying to devise plans that fairly distribute the
18 money that is available in each one of these settlement
19 funds, and essentially the approach he came up with was a
20 weighted point system where he gives more weight to vehicles
21 where we have good evidence of coordination, and when I say
22 good evidence it isn't always perfect given where we are in
23 the litigation and just quite frankly the nature of the
24 evidence we receive often says somebody might have met and
25 might have talked about this particular model, or it could

1 have been this model or that model, so it isn't always
2 perfect, but where we think we have pretty good evidence of a
3 particular model being part of some coordinated activity,
4 Mr. Rosenthal has given that model the highest weighting
5 possible.

6 And so a dealership will come in then and have a
7 claim form, which we have submitted to the Court as part of
8 the Jue declaration, and will tell us in each year how many
9 units of a particular model did they sell. Those units will
10 then be applied to the weighting or scoring system. So you
11 get the highest amount for a model that we have good evidence
12 that was coordinated, and you then get a lesser amount for
13 the next three model years of that model. The idea being
14 these parts sometimes span three or four years, so let's say
15 a 2010 Camry was coordinated, a wire harness that goes into
16 that Camry may be in the 2011, 2012, 2013 model years as
17 well, so that's the next highest weighting.

18 Again, the evidence isn't always perfect here.
19 Sometimes the defendants will say we sold these wire
20 harnesses, we are not entirely sure what model years they
21 went into or even what models they went into, they think they
22 know but they don't always.

23 So the next step then is weighting OEMs who were
24 targets of coordination and then beneath that any other
25 vehicles. So he's got a graduated kind of weighting system

1 that is intended to provide more relief to automobile dealers
2 who sold more vehicles that we believe were coordinated.

3 He also has a system for assigning points to the
4 parts because if you remember the component parts for repairs
5 or other uses are also at issue in these particular
6 settlements before Your Honor. These were cases that
7 involved parts allegations and the releases that are before
8 the Court involved parts, so he has allocated certain
9 weighting to parts as well.

10 In order to be sure that we don't overburden these
11 dealers in trying to prove to us which parts they bought
12 because it is not exactly easy sometimes with the different
13 part numbers and identification numbers for different types
14 of wire harnesses, as an example, so what we did there is he
15 looked at it and decided that the idea would be that you can
16 use the volume of your vehicle sales for purchases as a
17 surrogate for parts. In other words, a large dealership that
18 purchases a lot of these vehicles is likely to also purchase
19 a lot of the parts, so that's an option that the class
20 members have is to essentially say I don't want to submit my
21 parts invoices as part of my proof of claim, what I just want
22 you to do is rely on my vehicle purchase numbers as a
23 surrogate. If they do choose to come in with their actual
24 parts purchase information that's what will be used in the
25 weighting process.

1 So we have submitted some case law, Your Honor,
2 that says that your analysis of these plans of allocation is
3 essentially the same, it is the same standard as Rule 23,
4 which is are they fair, reasonable and adequate under the
5 circumstances. We believe these plans are. The plans that
6 we provided to you so far are the wire harness, the occupant
7 safety systems, inverters and switches. The reason you don't
8 have all of them in front of you is that some information is
9 still coming in, so to speak, with some of these other parts,
10 and the plans are still being essentially put together.

11 The case law when we came to you on preliminary
12 approval is pretty clear that you can enter final judgment
13 without having any plan of allocation before you, and you can
14 let the parties come back later and propose those.

15 THE COURT: Explain to me a little bit more about
16 what happens -- I see the claims form that the auto dealers
17 have to fill out and they mail this claims form into --

18 MR. RAITER: Gilardi.

19 THE COURT: -- Gilardi, and Gilardi has a facility
20 that can handle all of these, and will Gilardi be the ones to
21 apply these plans?

22 MR. RAITER: Yes.

23 THE COURT: And then disburse the funds?

24 MR. RAITER: Yes, yes.

25 THE COURT: Okay.

1 MR. RAITER: So they will be the claims
2 administrator as well with the Court's approval, and we have
3 that in the proposed omnibus order that I presented to you.
4 The process is also now available electronically so they
5 don't have to just mail it in, they can fill out a form
6 electronically and submit it. We have asked them to back up
7 their data or their claim with their year-end OEM statements,
8 which defendants are familiar with what those are, it is
9 essentially at the end of the year or actually at the end of
10 each month a dealer submits to the OEM kind of a breakdown of
11 what we purchased, what we sold. So those are documents that
12 are already in existence for most dealerships, they should be
13 accessible for most dealerships, and that's what they can
14 submit to say I bought 1,000 Corollas, here is my OEM
15 statement that shows that I did.

16 We will accept other documentation as well if there
17 is something else that the dealership has that is good
18 evidence that they actually purchased those vehicles or
19 purchased those parts.

20 What Gilardi will then do is by the end of the
21 claims deadline -- or at the end of the claims deadline will
22 essentially calculate all of these weighted scores for each
23 of these different parts and will assign the dealership some
24 kind of a score for its claim. From there you then are going
25 to make a pro-rata distribution of the particular settlement

1 fund to those dealers that have made claims to that fund
2 based on their weighted score.

3 THE COURT: So none of this is done, as I
4 understand it, until the very end, so that's why you end up
5 with no -- I mean, you know you are distributing everything?

6 MR. RAITER: Correct, we are going to put it all
7 out, right. So the claims process is just getting underway,
8 and we will obviously make efforts to be sure that the
9 dealers are aware that the process is underway, that they
10 make their claims, that they receive assistance in perfecting
11 their claims. We have every incentive to get that money paid
12 out to the right people at the right time.

13 THE COURT: Okay. And you indicated in your
14 settlement -- or in your papers that there is a minimum of
15 350 --

16 MR. RAITER: \$350, yes.

17 THE COURT: -- that the auto dealership will get?

18 MR. RAITER: Correct.

19 THE COURT: So at the end, what I wasn't quite
20 clear about, if the dealership does not make any claim at all
21 then they wouldn't even be entitled to that or would you
22 automatically send --

23 MR. RAITER: It has to be a perfected claim form.
24 Keep in mind that some of these class periods start at
25 different times or that certain vehicles may have been

1 coordinated at different times, and if you are an auto dealer
2 that went out of the business before then or just came into
3 business after that you may not have a valid claim based on
4 timing, so we really do need to see a claim come in from
5 somebody that gives us the time frame, gives us the backup
6 documents.

7 Mr. Rosenthal came up with the \$350 minimum payment
8 essentially as an incentive for people to think to themselves
9 it is worth my time to fill this out, to have somebody at my
10 dealership to fill this form out and go through this process.

11 THE COURT: And what about like during the
12 recession and when the companies went out of the business and
13 all of these auto dealerships that I've read about, I don't
14 know, that went out of the business, what about those
15 dealerships?

16 MR. RAITER: Yes, I should have said this. The
17 notice plan that the 6,000 postal addresses and even the
18 e-mail addresses included dealerships that were once in
19 business and may no longer be in business. So we made an
20 effort to reach out to those dealerships because they would
21 have a claim here. Now, how it is presented and who actually
22 holds the claim and all of those fun things are a different
23 issue for the claim process, but certainly if a dealership
24 went out of the business but was in business for the first
25 half of the particular class period they would in theory have

1 a claim and could bring the claim forward and show that they
2 are the right person who owns the claim, so to speak, or is
3 authorized to bring the claim. So we have -- no one is
4 excluded on that basis, you do not still have to be in
5 business to file a claim.

6 So, Your Honor, we have asked you in the omnibus
7 order before the Court to approve these plans of allocation
8 that you have before you, and we recognize that for any
9 future part and future plans of allocation we will need to
10 come to the Court and get approval for those and we intend to
11 do so as quickly as we possibly can.

12 One thing I should have mentioned is that we also
13 propose in this allocation plan through Mr. Rosenthal, it was
14 really his idea, which was a very good one, which is to put
15 some money into reserve for some period of time from each one
16 of these funds. The idea being is we may not have all of the
17 information right now about particular models or particular
18 coordination and we don't want to dole all of the money out
19 only to find out later that there was some model that was
20 affected and we didn't account for that properly. So he has
21 proposed that we set aside via Gilardi and these qualified
22 settlement funds 40 percent initially to sit and to be sure
23 that we have the ability to essentially direct the money to
24 the right people at the right time. As these cases unfold,
25 wire harness is farthest advanced, it may be that we come to

1 the Court and we say we believe we have the information, we
2 would like permission to disburse what we have in reserve, if
3 that makes sense.

4 THE COURT: So you are going to be doing basically
5 two disbursements, or 60 percent of the fund now and then
6 40 percent at a later date if it is still there?

7 MR. RAITER: Exactly, exactly, yep, because we want
8 to treat everyone fairly and because the litigation continues
9 there may be new information that is material. It may turn
10 out that it really isn't and that we have covered it
11 adequately in the plans as they are approved, and if so you
12 would run that 40 percent back through those class members
13 the same way you did the first 60 percent.

14 THE COURT: So in terms of distribution you're
15 asking to take out 40 percent of the fund and then I know you
16 are asking for five percent for future costs, and then the
17 reimbursement for costs and the attorney fees?

18 MR. RAITER: Uh-huh.

19 THE COURT: What do you see as the net amount that
20 is ready to be distributed roughly?

21 MR. RAITER: That's a good question. I haven't
22 done that calculation. The 40 percent may be soon. Again,
23 we just wanted to be absolutely sure that we didn't have
24 something that shocked us later and said we didn't know about
25 this and now we need to add these vehicles in. So we are

1 trying to work as quickly as possible to get claims paid
2 because the money is just sitting there and it should get in
3 the right hands as soon as we can, so I haven't done that
4 calculation but that would be the idea.

5 We have, as you know, we have Sumitomo, the motion
6 before Your Honor, at least it has been briefed, we have a
7 settlement with Sumitomo for preliminary approval, and there
8 may be some other settlements relatively soon, so we will be
9 adding hopefully to these funds essentially as we go is our
10 hope.

11 THE COURT: Okay.

12 MR. RAITER: At least as to the final approval
13 aspect of this settlement, Your Honor, or these settlements,
14 we have submitted to you a set of orders. The first is what
15 I have called the omnibus order, and that's an order that
16 would apply across all these settlements and has the various
17 Rule 23 findings, has the appointment of settlement counsel,
18 the appointment of the class representatives, it has the
19 approval of the plans of allocation and approval of the
20 notice plan, et cetera.

21 What we have then done with each of the defendant
22 groups is circulate and I think approve final orders for
23 judgment for each of these defendant groups. There is an
24 exception or two, one might have more than another -- or one
25 may have two of these orders for judgment, and then the Lear

1 and Kale Sales are put together into one document, but the
2 idea would be that we would ask you to enter some kind of an
3 omnibus order hopefully like the form we have proposed to you
4 which also includes defendants' comments and edits. That
5 particular omnibus order I will need to submit a very, very
6 slightly amended version to the Court to clean up some case
7 number and ECF number mistakes, and then also on paragraph 44
8 we inadvertently said that we had the starters plan of
9 allocation before you when, in fact, we have the switches.

10 Defense counsel I believe has signed off on that
11 omnibus order, I'm not suggesting that they joined in it, but
12 they have had the opportunity to submit edits, comments and
13 what we will submit to you today is hopefully something that
14 will be to your approval.

15 Each of their orders for judgment they have
16 essentially signed off on. We have asked for their input.
17 They look very much the same, there are a few little
18 differences among them, but we'll submit to the Court all of
19 those orders which then direct the entry of final judgment as
20 to these defendant groups.

21 THE COURT: So you are going to submit, just so I'm
22 clear on this, a whole new set, let's say, of orders, so that
23 I will know these will be the final --

24 MR. RAITER: Exactly.

25 THE COURT: Okay.

1 MR. RAITER: I will try to not have a bunch of
2 things going different ways but they are very, very minor
3 changes, one to paragraph 44, one to some ECF and case number
4 citations for the HIAMS or Hitachi Group that we got wrong
5 when we submitted the proposed order.

6 So the second order before Your Honor is a request
7 for reimbursement of costs, disbursements, future litigation
8 fund, attorney fees and service or incentive awards. As you
9 know, you have the ability under Rule 23(h) and 54(d)(2) to
10 award fees and reimbursement of expenses to the auto dealers.
11 Again, we don't have any objections or comments to the fees
12 that we have requested, the reimbursement. We posted that
13 motion several weeks before the opt out or the objection
14 deadline. We filed it with the Court, put it up on the
15 settlement website in case anyone wanted to comment before
16 they had to object or opt out.

17 The methodology for our calculations in our
18 request, so you have an idea of what we did, I think we
19 spelled it out but I want to be clear, we submitted to you
20 the Loadstar for the cases in which we have settlements
21 before the Court. We also submitted what each of our firms
22 essentially call a general auto parts file, and those files
23 are files essentially that reflect the work that is done that
24 benefits all of this -- all of these cases and all of this
25 litigation. When we come to a status conference we don't

1 come for only wire harness, we come for all of the cases.
2 When we work with some of our experts we work for all of the
3 cases rather than any particular case at times. What we have
4 done as lead counsel is directed our auto dealer counsel to
5 try to attribute time and expenses as best possible to a
6 particular case or to a particular part so that we are
7 tracking that time and that investment and those fee requests
8 when we come to you based on the settlements.

9 THE COURT: So the 41,000 hours you are talking
10 about -- yeah, 41,000, relate to these parts only and they
11 have been pulled out from --

12 MR. RAITER: Correct.

13 THE COURT: -- all of the parts?

14 MR. RAITER: With the exception of the general
15 time. Again, if I come to a status conference I would put my
16 time down as auto parts general because I'm here for not just
17 wire harness but all of the other cases. So the 41,000 hours
18 includes what we have deemed general billing that would apply
19 across the litigation.

20 THE COURT: So it won't be duplicated in the next?

21 MR. RAITER: Absolutely not, and that's what we are
22 trying to be clear about is we have a system in place so we
23 know what our time and expenses are. You will know what fees
24 you have awarded or what expenses you have awarded. We
25 directed our people when we made the preliminary -- excuse

1 me, the filing for the motion for attorney fees and expenses
2 we basically said okay, now we need to draw a line because we
3 need to know what expenses are incurred going forward, we
4 need to know what time is incurred going forward because if
5 we are fortunate enough to get an attorney fee award from you
6 today or shortly hereafter we know that we can't come back in
7 and double dip and ask for the same time again. So what we
8 would probably intend to do is come in and say here is our
9 time on these cases where we have settlements again, here is
10 the aggregate amount of time and expense, here is what you
11 have already awarded and here is the difference, that seems
12 to be the only way we can think of to do this because the
13 litigation continues.

14 So, again, the time before you has parts' specific
15 time for each part involved in the settlements, those cases
16 will continue against other defendants, and there will be
17 time spent there, and then we will have the general time
18 where it benefits more than one case essentially, so that was
19 the methodology. Again, we don't have any objections to any
20 aspect of this request.

21 We have requested reimbursement for past expenses
22 as of essentially the beginning of October, incurred of
23 \$1,661,946 that counsel for the auto dealers have advanced
24 from their firms to benefit these settlement class members.
25 We asked for the establishment of a future expense fund. As

1 you know from the case law, the Packaged Ice and the Manual
2 for Complex Litigation, and I believe you also did it for the
3 direct purchasers in this litigation as well, setting aside
4 some money from these settlements to pursue the claims in the
5 parts cases at issue here. So I want to be very clear about
6 this; the settlement fund here if we don't have a settlement
7 in bearings, which we don't have before you, the fund that we
8 have before you would not be used for the bearings litigation
9 because that would not be fair to those settlement class
10 members, so we would use this future fund only for the parts
11 cases at issue before you, the 18 different parts that we
12 have. So, again, we are trying to be sensitive to where the
13 money should be used and how.

14 We have asked for five percent of the gross
15 settlement funds, which would be \$2,947,395, as a future
16 litigation fund. That would be something that we would
17 obviously keep records for, both what is in the fund, what
18 goes out of the fund, how it was spent, and certainly if the
19 Court had questions as we proceed we would be happy to
20 provide accountings to you as we go.

21 We have asked for an award of attorney fees.
22 Again, interim fee awards as the litigation continues are
23 well accepted, the Air Cargo case, the Diet Drugs case, Your
24 Honor awarded fees to the direct purchasers in this
25 litigation as well.

1 We ask that you apply a percentage of the fund
2 approach which is favored in the 6th Circuit. What we have
3 asked for is one-third of the net settlement funds remaining
4 after the deduction of two things, and that is the cost of
5 notice and settlement administration, which we estimate at
6 about \$500,000, and then after the future litigation costs
7 set aside the 2.947 million. So, in other words, we are not
8 asking to take a fee off of those things, we don't believe
9 what -- we are not asking for that.

10 So the calculation as we see it is \$58,947,900 is
11 the gross amount of the settlement funds. You would take
12 away \$2,947,395 for the five-percent litigation fund set
13 aside, and you would also then remove \$500,000 for settlement
14 claims notice and administration. You would take that number
15 and divide it by three, and this is in my declaration that
16 supports the fee request, that would leave \$18,500,168 for
17 attorney fees. If you looked at that instead of being
18 one-third of the fund minus those deductions, if you looked
19 at it instead as what percentage of this -- is this of the
20 gross settlement funds it would be 31.38 percent.

21 The Loadstar cross check on this, you've already
22 mentioned the 41,000 hours of attorney time, 6,000 hours
23 approximately of paralegal/law clerk/professional staff time,
24 the Loadstar total is approximately \$26.1 million as of about
25 the beginning of October. If you were to award the fee

1 request of 18,500,000 that would be a 0.70 Loadstar, it would
2 be a negative multiplier, and that's simply the product of
3 litigating these cases for three and-a-half years and the
4 amount of the settlement that we have before you or the
5 settlements we have before you, so we are not asking for a
6 positive multiplier, in fact, it would be a negative
7 multiplier. And if we were to come forward again for a
8 request for fees we would obviously do the accounting for you
9 so we can give you a big-picture view of multipliers,
10 negative-positive disbursements as we need to have a good
11 accounting for that as we go.

12 Finally, Your Honor, the service awards we have
13 requested for the auto dealers are \$50,000 each for those who
14 are named representatives in the operative complaints. As
15 you know from the Haddocks and other cases in the
16 6th Circuit, these fees or awards are intended to encourage
17 people or businesses to come forward to serve in these roles
18 and to also recognize their efforts, their service and their
19 commitment to bringing cases to a conclusion.

20 I think you're pretty familiar with the amount of
21 discovery that has been directed to the auto dealers. It has
22 been daunting for many of them. We have produced, for
23 example, or been asked to produce invoices for all the
24 purchases of cars going back to 1998 to the present. For
25 some dealers that is tens of thousands of vehicles at issue.

1 We have also asked to produce certain electronic DM'S data.
2 We have been asked to produce certain incentive and other
3 documents from the OEMs or to and from the OEMs.

4 THE COURT: How many of these representative
5 dealerships do you have?

6 MR. RAITER: I don't -- we have a couple that are a
7 little bit in limbo, as you know. We have got one that has
8 been allowed to move out of the case, Holdsbower. We have
9 two motions for dealerships that would like to be out of the
10 litigation, so it is in the low 40s, less than 45 and more
11 than 40.

12 The reason for that -- this is an interesting issue
13 because if we were to come in often with a dealer who
14 purports to represent people from a state other than the one
15 in which they reside, we often get a motion from the
16 defendants saying you have to have a dealership
17 representative in each state. So in order to carry out
18 litigation like this on a nationwide basis we have to have
19 that many dealers in order to not have this argument
20 advanced. We don't agree with the argument but that's the
21 reason you do it.

22 So we would ask Your Honor that you award that
23 amount to these dealers. It is well supported in the case
24 law. Again, we have cited 6th Circuit District Court cases
25 like the Liberty Capital which was \$97,000 and \$95,000;

1 Cardizem, which was \$75,000 for each class representative,
2 that was a 2003 decision; Revco Securities Litigation, which
3 is Northern District of Ohio in 1992 awarded \$200,000.

4 THE COURT: So how did you come up with \$50,000? I
5 shouldn't have asked that question.

6 MR. RAITER: You try to use your best judgment
7 based on the results, based on the amount of effort. These
8 dealerships obviously are still facing additional discovery,
9 they have depositions that they will have to sit for, and so
10 it is kind of we believe supported by the case law and
11 supported by where we are at right now in the litigation. So
12 that's how we got there. There is no magic to it. All of
13 this is in your discretion; the attorney fees, the
14 reimbursement of the expenses, the incentive awards are all
15 up to Your Honor's good judgment.

16 We have submitted a proposed order for the attorney
17 fees and expenses. Again, I will circulate that as part of
18 this e-mail back to the Court so you have that handy, but we
19 ask that you make these awards. Unless you have questions
20 I'm happy to pass the microphone.

21 THE COURT: Okay.

22 MR. RAITER: Thank you.

23 THE COURT: Defense, anyone want to speak?

24 MR. IWREY: Your Honor, I have a very brief
25 housekeeping issue.

1 THE COURT: Okay.

2 MR. IWREY: Could I clarify, Your Honor, one thing
3 with Mr. Raiter before that?

4 (An off-the-record discussion was held at
5 3:10 p.m.)

6 MR. IWREY: Your Honor, Howard Iwrey on behalf of
7 the TRW defendants, and also speaking on behalf of the
8 AutoLiv defendants.

9 First of all, the clarification that I wanted to
10 make was that 16,000 notices were mailed out, not 6,000 as
11 Mr. Raiter stated.

12 THE COURT: Right.

13 MR. IWREY: Which is even better.

14 THE COURT: Yes.

15 MR. IWREY: What I wanted to point out, Mr. Raiter
16 mentioned to you that some of the defendants' specific
17 proposed judgments have slightly different provisions. The
18 provisions in AutoLiv and TRW have slightly different
19 provisions.

20 As you recall at the last hearing in September when
21 the Court approved dissemination of the dealer notices, I
22 said that TRW and AutoLiv have a motion pending in the Rush
23 Trucks case that could relate to this settlement we think in
24 a very small way. The dealer proposed orders for TRW and
25 AutoLiv do make reference to that motion, and that motion is

1 ECF Number 7 in the Rush Trucks case, which is 15-cv-12050.

2 Your Honor, that motion is pending, fully briefed
3 and ready for oral argument, and we would suggest that the
4 Court consider ruling on the motion promptly so that the
5 claims administration process in the dealers' case can
6 proceed smoothly. And we are happy to speak with Rush, I
7 don't believe counsel for Rush Trucks is here, but we are
8 happy to speak with Rush's counsel and your chambers so we
9 can set up a hearing date on that.

10 THE COURT: Would that hearing date be set up
11 for -- we have a conference in December, right?

12 MR. IWREY: I believe it is January 9th.

13 THE COURT: You want it before that?

14 MR. IWREY: If possible.

15 THE COURT: Okay.

16 MR. IWREY: Okay. Thank you very much, Your Honor.

17 MR. RAITER: Mr. Iwrey was correct about the
18 number, it was approximately 16,000 direct mailings.

19 THE COURT: I have that in my notes.

20 MR. RAITER: And we did agree on the language in
21 their final order and judgment and so I don't have anything
22 further on that.

23 THE COURT: Okay. Anyone else have any comment?

24 (No response.)

25 THE COURT: No other comments. Okay. I would like

1 to rule on these things right now so we can proceed. Okay.
2 We have got a -- the motion is for, I believe, ten
3 previously-approved settlements with certain defendants in
4 this MDL involving 18 of the component parts. I'm not going
5 to list the defendants but we all know who they are.

6 First of all, we have the notice and as we have
7 just discussed there were 16,000 actual mailings as I
8 understand it in addition to 124,000 e-mails to addresses
9 associated with these dealerships, and finally, of course, we
10 have the notices as counsel indicated that were published,
11 and we have the website. So I think that the notice plan
12 which is alleged to have reached 95 percent of the eligible
13 automotive dealers worked out very well. I think that's a
14 tremendous number of dealerships to have reached.

15 I am somewhat amazed that we haven't gotten any
16 more objections but today is the date set, it was in the
17 notice and we don't have any other objections except for the
18 one that was withdrawn, and I think that does speak to the
19 reasonableness of the settlement.

20 We have Mr. Rosenthal's plan of allocation. I
21 cannot speak as to how that plan will work, but I believe he
22 is experienced in allocating things such as this and that the
23 plan for allocation sounds fair and reasonable and adequate
24 to give weight appropriately to the various dealerships.

25 The issue of whether the proposed settlement is

1 fair, reasonable and adequate, the Court, of course, has gone
2 over this in the preliminary rulings, and there are any
3 number of items that have to be taken into consideration and
4 we dealt with these before but I will simply touch on them.
5 The likelihood of success, I guess that's disputed between
6 the parties but the settlement resolves that. The likelihood
7 of success on these indirect purchasers are -- is a little
8 risky and therefore that has to be taken into consideration.
9 There is also the value that has been discussed before as to
10 icebreaker settlements.

11 The next issue is the complexity, expense and
12 duration of continued litigation. Certainly we know
13 antitrust cases in themselves, at least in my experience, are
14 complex. I think this case has many unique twists and is a
15 very complex case that could go on and may for some parts and
16 some defendants a very long time at a great expense. I think
17 we can see the expenses that have already been incurred to
18 proceed with this litigation.

19 Another factor is the judgment of experienced
20 counsel and I have addressed this before, I think both by
21 reviewing the resumes of counsel involved here and by judging
22 the work that has been done and the pleadings and the briefs
23 that have been submitted and in observing counsel in court,
24 the Court finds that settlement counsel is very experienced
25 and well able to evaluate the strengths and the weaknesses of

1 the claims and defenses that exist in this case, and I
2 believe that counsel believes the settlement is fair,
3 reasonable and in the best interest of the settlement class.

4 Another item is the reaction of class members and,
5 of course, we have already touched on that that there has
6 been basically with one exception no input from class
7 members. The settlement class counsel have negotiated this
8 the Court believes at arm's length.

9 Another factor is the public interest and of course
10 the settlement of complex litigation such as this conserves
11 judicial resources and that's in the best interest of the
12 public but also it is important for the public to see a
13 result which is determined to be fair and reasonable given
14 the nature of this litigation.

15 The Court -- well, we know the notice sent out was
16 the notice proper. The Court reviewed the notice and it does
17 seem that the notice covered all of the issues that would
18 come up and well informed the recipients of what was going
19 on. I did think -- I want to comment on this. I thought
20 that was very good in the notice where you talked about what
21 does it mean to me, how do I do this, et cetera. I thought
22 that there was plain English, plain English used, which kind
23 of surprised me with your hourly rates that you could come
24 down to such plain language.

25 And the next issue is should the settlement class

1 be certified for purposes of effectuating the proposed
2 settlement. We have gone through this before when we talked
3 about the classes -- the proposed classes. There is
4 numerosity, clearly we know there is numerosity by the number
5 of notices that had to go out. There is commonality,
6 questions of law and fact common to the whole class. There
7 is typicalities, the claims of the respective parties are
8 typical of the claims in this antitrust of each and every
9 person or entity, and the injuries also affect each member in
10 the same way. There is adequacy of representation, and the
11 Court has already addressed the qualifications of counsel and
12 the qualifications of the representative dealerships,
13 plaintiffs' counsel has referenced those dealerships and what
14 they had to go through, and they are representative of all of
15 the dealerships. We know that common questions predominate
16 over questions affecting only individuals and would satisfy
17 Rule 23(b)(3).

18 The next issue is whether the plan of allocation
19 and settlement class and auto dealer class should be
20 approved, and the Court has indicated that the plan of
21 allocation pleadings appear to it to be a fair and adequate
22 plan, and that the counsel -- the Court will appoint counsel
23 to represent the settlement class and also appoint the auto
24 dealers -- or approve of the auto dealers' class
25 representatives.

1 So the Court will approve the settlement in these
2 actions with the plan of allocation, however, only for the
3 four parts that were submitted to the Court.

4 The next issue has to do with the funds -- multiple
5 issues with the fund. There is a request to set aside
6 40 percent of the fund for future and unknown, I guess I
7 should say, items that might come up to be resolved. The
8 Court will approve that 40 percent at this time, and it would
9 be held but I hope distributed as soon as possible.

10 The request for reimbursement for past expenses.
11 The Court has been looking at the expenses amongst various
12 parts as they have been submitted basically quarterly these
13 past years. You know there are expenses that I have no way
14 of knowing. You charge for travel and, you know, I don't
15 know if you are staying at the Ritz or Motel 6, I mean, I
16 have no way of knowing that. But I think when a court
17 appoints a group of attorneys such as I have here we depend
18 on your own credibility and honesty, and I have no intention
19 of delving into these individual expenses regardless of the
20 multitude of expenses for various people and entities,
21 experts, document reviews, the hosting of the papers, the
22 computer systems, et cetera. The Court will approve the
23 \$1,661,946.95 for the expenditures.

24 I stop to say this because the last conference I
25 went to they delved into these expenses and had CPAs -- a

1 number of the MDLs had CPAs appointed to look at these
2 expenses, but when I look at the cost of hiring such folks
3 versus the cost of the expenses I think I'm going with your
4 honesty on the expenses, so that's basically where I come
5 down on that issue.

6 We know that we have only 18 parts here and only
7 some of the defendants so the Court does agree with the
8 future litigation expenses, that's that five percent that has
9 been requested, and I think that comes to \$2,947,395 for
10 future expenses against the non-settling defendants, and I
11 think that that is very fair and it is fair to the individual
12 plaintiffs because they are continuing their litigation
13 against these defendants and therefore should share in these
14 costs.

15 In terms of the service award for the dealership
16 representatives, the request is for 50,000 with somewhere
17 between 40 and 45 dealership representatives. I think that's
18 a fair number considering all of the state issues that we
19 have. Whether \$50,000 is adequate is really like pulling
20 numbers out of the air based on educated guesses, and I think
21 given the number of years and the amount of work -- as I
22 understand it there is some 700,000 pages of documents that
23 have been gotten from the dealer representatives, and
24 depositions to come, so the Court is going to award the
25 \$50,000.

1 The next issue, which is probably the most
2 difficult, is the question of attorney fees where the Court
3 looks at a number of approaches. There is the percentage of
4 the fund approach, the Loadstar approach, what is that third
5 one called, the percent -- the Loadstar percentage that is
6 frequently used or called Loadstar crosscheck. The Court did
7 a number of things. Let me tell you, first of all, I
8 considered the fact that I am told there's 41,000 attorney
9 hours and 6,000 paralegal hours or clerk hours, assuming
10 though I know you all work much more than this, just to
11 eyeball this, that you work 1,500 hours a year, and for
12 41,000 hours I basically get 27.3 attorneys and this is for
13 over four years, so it will equal out to be roughly 6.8
14 attorneys a year. That doesn't seem to be enough at all.
15 But anyway those hours which looking at them in and of
16 themselves are somewhat staggering but when you consider it is
17 over four years in all of this complex litigation the Court
18 is just taking an eyeball figure to say is that a reasonable
19 number of hours for attorneys to work, and I think in this
20 case it certainly is.

21 In terms of the approach to this, whether the
22 Loadstar or percentage as between those two approaches, the
23 Loadstar I think is a much more difficult approach to take.
24 One, you get into the hourly rate, and I think some of these
25 hourly rates I will tell you are ridiculous but if you get

1 them I guess that's more power to you, but I would have a
2 very difficult time looking at the specific hours and
3 applying the hourly rates that have been submitted to the
4 Court.

5 But what I did do, if I can find it here, is I
6 looked at a blended rate, and when I look at the blended rate
7 by taking the amount requested here, the 18 some million,
8 divided by the 47,000 hours, that's adding both the attorneys
9 and the paralegals, I get a \$393 an hour blended rate. If I
10 take just the attorney, the 41,000 hours, I get a \$451
11 blended rate, and I think that that blended rate is a
12 reasonable hourly rate with some attorneys with more
13 experience obviously getting more and some less.

14 The Loadstar in this case is 26.1 million, I
15 believe, and the requested fee is \$18,500,158, which counsel
16 has indicated is that multiplier of 0.70, which is a negative
17 multiplier, which are generally considered reasonable and
18 appropriate, so that crosscheck I think works out well.

19 The Court has to weigh a number of factors in the
20 fee award; one, the value of the benefits to the class. We
21 know here that the class, of course, is getting fair cash
22 settlement plus cooperation as to against the other
23 defendants. The society benefits by awarding reasonable
24 attorney fees because this does encourage the bringing of
25 suits and the ending of these antitrust transgressions. And

1 the Court also notes that in this case specifically the
2 Department of Justice has received I think it is \$2.6
3 billion, something like that, \$2.9 billion in fines but they
4 did not seek any restitution, none of that is for
5 restitution. I also consider the fact that these cases are
6 worked on a contingent basis, and certainly there is a risk
7 of non-recovery specifically for indirect plaintiffs.

8 The complexity of the litigation. As the Court has
9 referenced already, it is very complex, multiple classes,
10 number of parts, multiple defendants. I mean, everything is
11 complex, even the fact that it goes across countries and has
12 various languages, it just keeps going. And we know, as the
13 Court has referenced before, that the skill of counsel is
14 extremely competent and very experienced.

15 So the Court in considering all of this in trying
16 to figure out the best way to determine the attorney fees and
17 considering the numbers that come out when you look at the
18 Loadstar and the crosscheck, finds that the requested amount
19 of the attorneys' fees, which is, I believe -- you said it
20 and I don't remember, it is just under a third, maybe
21 31 percent, the Court will award that. I find that it is a
22 fair, reasonable and adequate sum. Okay.

23 Okay. What did I forget? Plaintiff, you're going
24 to present all of the orders to the Court, and I will sign
25 it, and then you will work as fast as you can in getting

1 these other settlements. If at all possible we can --

2 MR. RAITER: We will, Your Honor.

3 THE COURT: -- get them together.

4 MR. RAITER: Yes. I know that this is off the
5 topic, but the Sumitomo preliminary approval that the
6 indirect purchasers, so the end payors and auto dealers have
7 submitted to the Court, we had called at one time trying to
8 schedule a hearing and we had a phone issue where we didn't
9 get with your assistant to get it scheduled, so I think that
10 would be one that we would want to get on for preliminary
11 approval hearing no later than the January conference, but if
12 there was another hearing for something else we might ask to
13 join in before that.

14 THE COURT: Okay. You wanted another hearing for
15 the settlement --

16 MR. RAITER: You have preliminary approval, this is
17 not part of the final approval, but the Sumitomo settlement
18 between the end payors and the auto dealers have been fully
19 briefed and submitted for preliminary approval. The auto
20 dealers were willing to forego a hearing, and my
21 understanding is either and/or Sumitomo and the indirects
22 would like to have a hearing, so we tried to schedule it by
23 having a call, the call had a glitch, we didn't get on the
24 phone with Your Honor's chambers, so that's just hanging out
25 there, but that would be another one that we should try to

1 move forward so we can get it to a final approval at some
2 point.

3 THE COURT: Okay. We will work on a date and let
4 you know if we can get that in in the next month.

5 MR. RAITER: Thank you, Your Honor.

6 THE COURT: Okay. Anything else?

7 (No response.)

8 THE COURT: Thank you, and I wish you all a very
9 happy Thanksgiving.

10 THE LAW CLERK: All rise. Court is in recess.

11 (Proceedings concluded at 3:35 p.m.)

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1 CERTIFICATION

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3 I, Robert L. Smith, Official Court Reporter of
4 the United States District Court, Eastern District of
5 Michigan, appointed pursuant to the provisions of Title 28,
6 United States Code, Section 753, do hereby certify that the
7 foregoing pages comprise a full, true and correct transcript
8 taken in the matter of In re: Automotive Parts Antitrust
9 Litigation, Case No. 12-02311, on Wednesday,
10 November 18, 2015.

11
12
13 s/Robert L. Smith

14 Robert L. Smith, RPR, CSR 5098
15 Federal Official Court Reporter
16 United States District Court
17 Eastern District of Michigan

18 Date: 12/17/2015

19 Detroit, Michigan
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